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COMMISSION ON HUMAN RIGHTS

Fiftieth session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 17 February 1994, at 3 p.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)

later: Mr. NEAGU (Romania)

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Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

(a) Torture and other cruel, inhuman or degrading treatment or punishment

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The meeting was called to order at 3.10 p.m.

STATEMENT BY MR. GIRMA WAKJIRA, CHIEF SPECIAL PROSECUTOR, TRANSITIONAL GOVERNMENT OF ETHIOPIA

1. Mr. WAKJIRA (Chief Special Prosecutor, Transitional Government of Ethiopia) said it was an honour to be addressing the Commission precisely at the time when it was examining the question of the impunity of perpetrators of human rights violations, and he congratulated the Special Rapporteurs, Mr. El Hadj Guissé and Mr. Joinet, on their excellent work on that question. For many people, the name Ethiopia still conjured up visions of emaciated human beings. But the famine which had raged in that country for many years had not been due to natural causes alone; it had been part of a pattern of systematic human rights violations perpetrated by the Provisional Military Administrative Committee of Ethiopia, or "Dergue", which had ruled Ethiopia for 17 years. From the time it had come to power, the Dergue had set about eliminating all the senior officials who had served before 1974; all had been executed. Then, on 1 May 1976, a massive campaign of repression against all the regime's opponents had been launched under the direct command of the Dergue Standing Committee chaired by Mengistu Haile Mariam. On 30 April 1976, hundreds of young people had been executed throughout the country, especially in Addis Ababa. During the Red Terror, initiated by Proclamation 129 of 1977, thousands of people had been victims of summary executions, disappearances and torture. During the subsequent programme of enforced resettlement from 1984 to 1986, almost 600,000 people had been moved from the north of the country to the south. Approximately 100,000 had died either during the journey or upon arrival at the resettlement camps. The events of 5 February 1994 in the Markale Market at Sarajevo recalled the bombing by the government air force of Hawzen Market in the Tigray region, during which 2,500 civilians had been killed.

2. In May 1991, the dictatorial regime of Mengistu Haile Mariam had collapsed and the Ethiopian People's Revolutionary Democratic Front had taken power. Its aim had been to restore democracy in the country. That was why the Universal Declaration of Human Rights had been incorporated into the Transitional Charter which constituted the basic law of Ethiopia. The Transitional Government, which was committed to introducing democracy, was discovering daily how difficult and complicated that process could be. However, it remained determined to reach that goal and to build a society based on the rule of law and respect for human rights. It had therefore chosen not to seek revenge, but to search for means of breaking away from the past which would be most beneficial for the future. That had obviously not been easy, for thousands of former officials implicated in the massacres and atrocities committed under the previous regime had been arrested after that regime had fallen. For a country with no financial or legal resources or a functioning judicial system, where the priority was to restore peace and stability, it had not been easy to decide what to do with all those accused of horrendous crimes. But it had been clear that it was necessary to adhere to international standards. Thus, the Office of the Special Prosecutor had been created on 28 August 1992 to compile a list of all the abuses committed by the previous regime and to bring those responsible to justice. In spite of its shortcomings, the system established constituted an important element in the efforts made to put an end to the impunity which had been of major concern to

the international community during the 1993 Vienna World Conference on Human Rights; such efforts were similar to those being made of other countries, such as Argentina, Chile, El Salvador, Chad and Uganda, who had set up commissions of inquiry to investigate human rights violations committed under former Governments.

3. The Special Prosecutor had embarked quickly upon his work, and in April 1993 almost 90 per cent of the detainees had filed applications for writs of habeas corpus, and by July 1993 more than half had been released. The Ethiopian Government had undoubtedly taken on an ambitious task, given the scarcity of its resources, but it was aware that democracy and impunity could not coexist and that a truly democratic country could not allow criminals to go unpunished on the pretext that they had acted on government orders. In fact the crimes committed by the members of the former regime were not only crimes against the Ethiopian people but against humanity. It was true that the process had been slow: by detaining 800 people for almost two and a half years without charge, the Government had laid itself open to international criticism. Moreover, tens of thousands of victims of the former regime were impatient for justice to be done. At the same time, it had to be pointed out that the international community had also been slow in responding to the Ethiopian Government's request for assistance when it had first embarked upon that monumental task. How was it possible in any case to try more than 3,000 people suspected of involvement in summary executions? First it was necessary to identify them and begin by drawing together the information available from all the documents and reports on torture and summary executions. That task had almost been completed thanks to the help of the Swedish Government and the first consolidated reports were expected by the beginning of April. The Government would then be able to take the appropriate decisions based on the facts and applicable laws. A balance had to be struck between the rights in question and the gravity of the violations and hopefully, with the support of the international community, it would be possible to achieve that balance and, in so doing, to make a positive contribution to the creation of an equitable legal system.

4. By the end of 1993, the Office of the Special Prosecutor had received assistance from the Governments of Sweden and Norway and from the Carter Centre in the United States of America. The Danish, Dutch and Canadian Governments had also helped the Ethiopian Government and, in the near future, France and the United Nations were to send internationally renowned experts to assist with its task. In addition, valuable assistance had been provided during the previous months by various non-governmental organizations (NGOs). That assistance would allow the Ethiopian Government to move forward along the path it had chosen. The courts were at present better prepared, an office of public defence was being set up to provide representation for all those accused, and Ethiopian laws and procedures would be brought into line with international standards. The long-awaited trials were to begin in May.

5. The promotion of human rights was a matter of universal concern, and intended to create a better world. Thanks to the assistance recently provided by the international community, Ethiopia too would contribute to that process and would thus be able to give effect to one of the indispensable prerequisites for the establishment of democracy: the rule of law.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (continued) (E/CN.4/1994/24, 25 and Add.1, 26 and Corr.1 and Add.1, 27, 28, 29 and Add.1, 30-33, 88 and Corr.1, 93 and Corr.1 and 103; E/CN.4/1994/NGO/5, 8, 10, 11, 18, 19, 21 and 25; E/CN.4/Sub.2/1993/8, 9, 23/Rev.1, 24 and Add.1 and 2 and 25; E/CN.4/Sub.2/1992/10; A/48/520 and 579)

6. Mr. NANJIRA (Kenya) thanked the Centre for Human Rights for the support and advisory services it provided to the developing countries, particularly the African countries, including Kenya, and requested it, as well as other competent United Nations bodies, to continue to assist those countries by organizing training courses and symposia for lawyers and judges, policemen, prison officials, military officers, teachers and all those concerned with the promotion of human rights and the administration of justice. Those countries all needed financial, technical and material aid in order to improve the administration of justice in the field of human rights. The Centre for Human Rights should therefore be granted additional resources to enable it to fulfil that task properly.

7. The Kenyan Government had taken a close interest in those questions on which recommendations had been made at the Vienna Conference. Indeed, it was Nairobi which had, in October 1992, acted as host for the Conference of the Ministers of Justice and Attorneys-General of East, Central and Southern Africa that had acknowledged the need to pay more attention and allocate more resources to institutions dealing with the administration of justice and had adopted a very important document on that matter which had been submitted to the Regional African Conference Preparatory for the Vienna World Conference on Human Rights held in Tunis in November 1992. The declarations adopted at that regional meeting and at the other regional preparatory meetings held in Costa Rica, for Latin America, Thailand, for Asia, and Uganda, by the Asian-African Legal Consultative Committee, had been taken into account at the Vienna Conference; it was important that their substance should not be lost sight of during the implementation of the Vienna Programme of Action and other relevant instruments in the field of human rights. In particular, the Kenyan delegation attached considerable importance to the realization of the principles concerning the rule of law and the administration of justice contained in the Vienna Declaration and Programme of Action, as well as in the resolutions adopted by the Commission and other relevant United Nations

bodies, and urged that the decisions taken by the international community should be given effect and that a review and appraisal mechanism should be created for that purpose.

8. The Governments of the developing countries admittedly were the ones primarily responsible for the promotion and protection of human rights in those countries, but they did not always have the necessary resources particularly for improving the administration of justice. It was therefore essential that they should be assisted by the international community in that field, and the Kenyan delegation renewed its appeal to all the Governments of the developed countries to provide the Centre for Human Rights with the financial, human and other resources it needed to respond to the appeals for assistance it received. Appropriations for the Centre under the regular United Nations budget should also be increased. The Kenyan Government itself had embarked upon a major programme to strengthen the country's system for the administration of justice, including the training of judges and law enforcement officers in accordance with internationally recognized standards. Nevertheless, as there were specific areas in which it would require assistance, the Kenyan delegation appealed to the Centre for Human Rights and to the donor community to help Kenya in that challenging but essential endeavour.

9. Mr. Neagu took the Chair.

10. Mr. ERRERA ANAYA (World Christian Life Community) remarked that, during their existence, peoples and nations were often tempted to follow the paths that led to the emergence and development of what could be called an "impunity syndrome"; an impunity in which each and every individual was implicated daily and which had repercussions at all levels, namely, social, civil, political, economic, religious and cultural. It was difficult to state with certainty how that impunity manifested itself, but when the entire population of a country was suffering and when their situation itself constituted a form of evidence then it was more than likely that impunity reigned.

11. Colombia was a prime example for although, paradoxically, it had acted as host to a series of seminars, conferences and other events to promote human rights in 1993, it was one of the most violent countries in the world. In fact, according to Amnesty International's annual report, published in July 1993, Colombia was one of the countries where torture was practised, where the armed forces were implicated in extrajudicial executions, where the indigenous peoples and social minorities were attacked, where the rights of the child were violated and where "social undesirables" - alleged delinquents, homosexuals and prostitutes - were murdered.

12. The various factors that encouraged and gave rise to impunity included failure to explain the meaning of human rights, ideological indoctrination which led to all forms of extremism, both on the right and on the left, religious indoctrination which fuelled wars of religion, economic indoctrination which caused excessive privatization, and enslavement to selfish interests outweighing all other considerations.

13. But the fact that the majority of so-called "third world" countries had to make huge sacrifices in order to pay off and service external debts could

also be described as impunity. Similarly, failure to ensure that the various projects undertaken in demonstration zones, as well as research in every single sector of the economy and society were properly planned, implemented and evaluated could also be regarded as factors contributing to impunity.

14. Impunity was also encouraged by the many covert means used to commit various crimes, such as the recruitment of anonymous civilians as hit men, the intervention of members of the armed forces or plain-clothes officers of the security forces, the use of private vehicles with false number plates, the falsification or destruction of compromising documents, the intimidation or elimination of witnesses, and the transfer of officials implicated in crimes in order to prevent investigations. Impunity reigned even when cases came to trial, for members of the armed forces implicated in crimes usually appeared before military courts with the result that their crimes were sometimes judged by the very persons who had ordered them.

15. Impunity lay at the very root of crime in Colombia, as in so many other States, and that situation more than justified the appointment of a special rapporteur.

16. Mr. KOTHARI (Habitat International Coalition) observed that many communities throughout the world had resisted forced evictions, thereby running the risk of not receiving compensation if evicted or of seeing their leaders assassinated; yet States turned a blind eye to those crimes or were even directly implicated in them. The Habitat International Coalition welcomed the excellent report concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8), and the progress report on the question of the impunity of perpetrators of human rights violations (E/CN.4/Sub.2/1993/6), and endorsed the Sub-Commission's request that the Special Rapporteurs should continue their study on the question of impunity. Mr. Kothari yielded the floor to Ms. Pereira and Ms. Martins, who would illustrate the serious consequences of resisting forced evictions by describing the case of their own communities near Rio de Janeiro, Brazil.

17. Ms. PEREIRA, supported by Ms. MARTINS (Habitat International Coalition), said that the majority of the 56 communities involved, which between them had a total low-income population of 25,000, had been established in the Tijuca Lagoon area near Rio de Janeiro 40 years previously, when land values had been very low and there had been no real estate speculation. Over the past five years, since the time when those communities had begun to organize resistance to attempts to evict them and to demand the right to the land on which they lived, their leaders had been systematically murdered.

18. Everything pointed to the fact that the murders had been committed by groups of professional killers, but they had never been investigated and all the relevant documents were kept secret in police archives. That fact alone demonstrated that corruption was rife in Brazilian courts and in numerous other Brazilian institutions. It appeared that the increasing impunity enjoyed by groups of professional killers in Brazil was now a common feature of other human rights violations in the country. Those communities therefore appealed to the Commission to support their legitimate struggle to remain in their settlements. That support would be consistent with Commission

resolution 1993/77 on forced evictions which had, moreover, been supported by Brazil. Unless the fundamental rights of those communities were immediately recognized and protected, their situation was likely to deteriorate in the very near future, since the municipal authorities intended to send in demolition crews to destroy some of the community settlements. An important point in that respect was that the municipal authorities had never proposed an acceptable alternative, such as resettlement in another area or suitable compensation. Although the communities in question had done everything possible to win recognition of their rights in Brazil, unfortunately they continued to be the victims of violence. The Commission was their only remaining chance of having justice done.

19. Ms. TREYDE (Australia) was of the view that the questions being considered under agenda item 10 presented a true challenge for the Commission, since torture, disappearances and arbitrary detention were among the most serious and, regrettably, the most widespread forms of human rights violations. Through its thematic mechanisms, the Commission had succeeded in finding a way of reacting to those violations that avoided confrontation and promoted greater cooperation within the international community. The problem of disappearances had become a source of increasing concern over the past few decades. The Working Group on Enforced or Involuntary Disappearances was following up 33,843 cases, but a backlog had accumulated and Australia was most concerned by the obvious inadequacy of the Working Group's resources.

20. Australia was particularly alarmed by the report on the visit to the former Yugoslavia by a member of the Working Group (E/CN.4/1994/26/Add.1) and had therefore decided to support the proposal contained in the report for a special process to be entrusted to the Special Rapporteur on the human rights situation in the former Yugoslavia and one of the members of the Working Group, who would submit a joint annual report to the Commission and possibly to the General Assembly.

21. Arbitrary detention was a permanent feature under many regimes, and Australia shared the regret expressed by the Working Group on Arbitrary Detention that many governments were abusing states of emergency and thereby considerably restricting the freedom of individuals. Australia noted the Working Group's view that habeas corpus was one of the most effective means of combating arbitrary detention. Habeas corpus was a non-derogable right, even under a state of emergency. Australia therefore supported the Sub-Commission's efforts to elaborate a declaration on habeas corpus, with a view to developing an additional protocol to the International Covenant on Civil and Political Rights.

22. Australia also believed that the mandate of the Special Rapporteur on the question of torture was one of the most important of the thematic mechanisms. The Special Rapporteur's report (E/CN.4/1994/31) stated that torture was practised in a large number of countries, and Australia had noted with concern the two factors identified in the report as facilitating its systematic practice. The first was the existence of legal systems that did not provide institutional safeguards to restrain law enforcement officials and security officers from resorting to torture, and the second was the de jure or de facto impunity enjoyed by those conducting the torture. Australia therefore strongly supported paragraph 60 of the Vienna Declaration and Programme of

Action concerning torture which called for the abrogation of legislation leading to impunity for those responsible for grave violations of human rights such as torture.

23. The Working Group on the draft optional protocol to the Convention against Torture had made good progress during its last session. Australia welcomed the adoption by the Working Group of an important new text on the election criteria for members of the Sub-Committee or of whatever mechanism would be established in connection with the protocol. That text specified that consideration should be given to the need to ensure a balanced representation of women and men on the Sub-Committee. Lastly, she said that her Government welcomed the substantial work being carried out under the authority of the Commission in the areas covered by agenda item 10.

24. Mr. TAN Songqiu (China) said that the Chinese Government had consistently supported the prohibition of torture. Even before it had acceded to the Convention against Torture, China had already provided for its strict prohibition through its legislation. Since acceding to the Convention, China had tried to make further improvements in its legislation, in particular by strengthening the way in which the actions of State officials were monitored by supervisory institutions. Those institutions included the National People's Congress, a body which was invested with supreme power and supervised the implementation of laws; the courts, procuratorates and public security organs which supervised one another's activities during criminal cases and punished those subjecting prisoners to corporal punishment or maltreatment; the disciplinary bodies set up within procuratorates which dealt specifically with violations of the democratic rights of citizens committed by State officials; and the media which could denounce cases of torture and other degrading treatment or punishment.

25. If torture was to be eliminated permanently, all forces in society had to be mobilized and the competence of legal officials improved. With that aim in mind, the Chinese Government had launched a national campaign in 1988 to make citizens more aware of what was lawful and encourage them to report any violation of the law. At the same time, the State had called upon all law enforcement bodies to draw up internal regulations in keeping with their obligations.

26. The Chinese Government attached great importance to the implementation of the Convention against Torture. In accordance with its obligations, China had submitted its first report to the Committee against Torture in 1989 and a supplementary report in 1993. The Committee had examined China's report in 1993 and had expressed satisfaction with the legislative, judicial and administrative measures adopted by the Chinese Government to prevent torture. China, which had made unrelenting efforts to eliminate torture from its territory, strongly objected to the lies being circulated about it which were the work of individuals with ulterior motives. Considerable efforts were still required on the part of the international community if torture was to be eliminated from the face of the earth, and China was prepared to do its share in that respect.

27. Mr. AKTAN (Observer for Turkey), reviewing the history of the human rights protection system, said that, during the cold war, attention had been

focused on violations committed during the internal armed conflicts which had accompanied the decolonization process, rather than on the nature of domestic regimes. Totalitarianism had collapsed, but the focus of the system remained the same. Although the sympathy shown towards colonized peoples waging guerrilla warfare was understandable at the time, it had nevertheless led to two mistakes. Firstly, guerrillas had been accorded combatant status under Additional Protocol I to the Geneva Conventions, and terrorists, in the guise of guerrillas, had thereby found themselves protected by the law. Turkey's experience was of interest in that respect. Ten years previously, the Kurdistan Workers' Party (PKK) had embarked upon a campaign of terror which, contrary to certain theories, had never evolved into guerrilla warfare. In 1993, for example, PKK had indiscriminately killed 1,200 civilians, the majority of them Kurds wishing to live with the rest of the population but regarded as traitors. That clearly constituted terrorism, not guerrilla warfare, and Turkey could not tolerate it. Nor could it tolerate the fact that terrorism should be classified as insurgency if it was of sufficient intensity, for it was not of the same nature. The second mistake had been to break terrorism down into a series of isolated acts and thereby to obfuscate it in the context of international humanitarian law by considering those acts as crimes under that law. Turkey, for its part, believed that terrorism, like genocide, which was never subdivided into a series of discrete acts, was a "crime against humanity" within the meaning of No. IV (c) of the Nürnberg Principles.

28. With regard to the legal system applied by the international community to internal conflicts, he recalled that it dated back to resolution 2444 (XXIII) on respect for human rights in armed conflict, adopted by the General Assembly in 1968. That system had not yet acquired the status of positive law. The only international law instrument applicable to internal conflicts was article 3, common to the Geneva Conventions, the scope and effects of which were limited. The international community had not yet elaborated instruments that could command universal acceptance and, in respect of internal conflicts, referred to human rights standards which had thus become de facto law.

29. Contrary to international law, the human rights approach to internal conflicts focused only on the human rights of terrorist suspects, whereas innocent civilians were not protected from the ravages of terrorist war, and terrorism was not prohibited as a method of combat. That approach gave rise to serious problems. According to international law, terrorists and guerrillas could be detained until the end of hostilities. They could also be tried for crimes against humanity without being accorded combatant status. The point was not whether the torture of terrorists was to be condoned, but that if innocent civilians were to be protected human rights standards reducing the period of detention could not, for example, be applied to terrorists.

30. As the General Assembly had urged in resolutions 2674 (XXV) and 2852 (XXVI) on respect for human rights in armed conflicts, it would be preferable to avoid those conflicts or to terminate them as quickly as possible. He asked what the Commission, the NGOs and the international community had done to achieve that aim and noted that, on the contrary, they seemed to have contributed to such conflicts, knowingly or unwittingly. Amnesty International itself admitted that it did not oppose the use of force

per se by opposition groups, but only the abuse of human rights. In other words, not only did Amnesty International and many other NGOs and certain Governments not oppose violence, but supported it on the grounds that it was a product of repression and was therefore defensive.

31. Quoting the Special Rapporteur on the question of torture, Mr. Rodley, he said that civil wars had largely replaced aggression between States. The latter, usually major Powers, used civil war as a means of attacking other countries by supporting one or other of the forces involved in the internal conflict. The fact that one side to the conflict was recognized or represented in the United Nations General Assembly in no way guaranteed it the protection of the international community. The policy of intervention was so endemic that it was futile to declare that it was "illegal". He added that it was necessary to identify the causes of the internal conflicts which raged in so many countries and were still considered purely in human rights terms. Amnesty International, which said that it also dealt with abuses committed by armed opposition groups, had not yet taken any action on the information provided by the Turkish Government concerning the 505 civilians killed in 1993 by PKK. Nor had the Commission on Human Rights ever condemned the massacre of innocent civilians, or appointed a special rapporteur on that question.

32. Mr. VENERA (Observer for the Czech Republic) said that the Czech Republic, as the successor State to the former Czechoslovakia with regard to all human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was fulfilling the obligations it had thus assumed. For example, protection against torture was guaranteed by Penal Law No. 140/1961 as amended. The Czech Republic had also incorporated a definition of the criminal offence of torture in an amendment to the Criminal Code, as requested by the Committee against Torture. The prohibition of torture was absolute and unconditional and applied throughout the country and in all circumstances. The Czech Republic, shocked by cases of torture and inhuman treatment in a number of countries, had made its first contribution to the United Nations Voluntary Fund for Victims of Torture at the beginning of the year. It was concerned that so few countries had ratified or signed the Convention against Torture and hoped that more would do so in the near future. Moreover, it welcomed the preparation of a draft optional protocol to the Convention against Torture. He also welcomed the useful contribution made by the Working Group on Arbitrary Detention and endorsed the proposal to extend its mandate.

33. Mr. LARSEN (Observer for Denmark), speaking on behalf of the five Nordic countries, said that torture was an affront to human dignity and the integrity of the individual, since its aim was to destroy the personality of the victim, particularly if that person was strong. Torture was also an attack on democracy, and for that reason the prime targets of torture were politicians, trade unionists, lawyers and others who sought to uphold free public debate, the rule of law and the creation of a civil society. It was important to remember that torture was also often used as a means of suppressing vulnerable groups, even though that aspect was not always accorded all the attention it deserved. Unfortunately, in spite of the various instruments drawn up to protect human rights, many Governments continued to ride roughshod over them, as was clear from the report of the Special Rapporteur on the question of torture (E/CN.4/1994/31).

34. The Nordic countries therefore appealed to all States which had not already done so to ratify and fully implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They also urged all States to consider ways of ensuring the speedy adoption of the draft optional protocol to the Convention, which was intended to establish a system of visits to places of detention. In addition, they hoped that further thought should be given to the question of how to protect physicians from being forced to participate in acts of torture. In that regard, they welcomed the fact that the World Conference on Human Rights had accorded such importance to the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

35. As the Special Rapporteur had noted, torture was more likely if the legal system failed to provide the institutional safeguards needed to restrain law-enforcement officials and members of security forces from resorting to brutal and illegal methods in order to achieve their aims and in countries where those conducting torture still enjoyed de jure or de facto impunity. The problem of impunity had been of concern at the Vienna Conference, and in paragraph 60 of the Vienna Declaration and Programme of Action, States were invited to abrogate legislation leading to impunity for those responsible for grave violations of human rights, such as torture. The Nordic countries urged all States to respond to that invitation and called upon those who had not already done so to adapt their legislation to the provisions of the Convention against Torture. All Governments should declare, under article 22 of the Convention, that they recognized the competence of the Committee against Torture to receive communications from individuals claiming to have been victims of a violation by a State party of the provisions of the Convention.

36. The Nordic countries believed that the victims of torture should receive effective assistance and attached great importance to the work of the United Nations Voluntary Fund for Victims of Torture, to which they had contributed about 50 per cent of its resources in the 1982 to 1992 period. They appealed to all Governments to make generous and regular contributions to the Fund so that it could respond to the growing number of requests for assistance it received. Research carried out at the Danish Centre for the Rehabilitation of Torture Victims (RCT) in Copenhagen had shown that the victims of torture, who included many refugees from the former Yugoslavia, could be helped to cope with their suffering, including psychological effects. In conclusion, he endorsed the Special Rapporteur's view that the elimination of torture was a matter of political will and that if that political will existed, it would be possible to put an end to the evil of torture for ever.

37. Mr. ALBAN (Andean Commission of Jurists) said that arbitrary detention, enforced disappearances and torture were linked, since the first often led to the other two. Those practices were themselves encouraged by increasing recourse to states of emergency, which restricted the right to freedom and security of the individual, and by emergency legislation against terrorism and illegal drugs trafficking which granted extraordinary powers to the security forces. In Colombia, for example, in the period January to September 1993 alone, during which the country had been declared to be in a state of internal unrest, there had been 132 enforced disappearances, of which 42 had been

attributed to the armed forces, the security forces and paramilitary units. As to torture, 544 cases had been reported, including 426 which had led to the death of the victim. In Venezuela, between September 1992 and October 1993, 1,525 persons had been detained arbitrarily - a decline in comparison with the previous period. Of those arrested, 720 had been leaders of political movements, social dissidents or candidates for posts as mayors or councillors; it was clear that arbitrary detention was being used more and more to stifle dissidence. At the same time, only four enforced disappearances had been recorded. However, there had been a considerable increase in the number of cases of torture. In Venezuela, the holding of prisoners incommunicado or beyond the statutory period of detention, as well as the ineffectiveness of applications for writs of habeas corpus, often due to unwilling judges, were factors which encouraged torture.

38. In Ecuador, there had been 116 arbitrary arrests, 115 cases of torture and four disappearances during the political and social conflicts of 1993. Once again, the impunity of those responsible was largely to blame. The situation in Peru was the worst of all, for although the number of enforced disappearances had declined, la Fiscalía Especial de Defensoría del Pueblo y Derechos Humanos (Special Procurator's Office for the Defence of the People and Human Rights) had recorded 77 alleged cases in 1993. It was therefore disquieting that the Working Group on Enforced or Involuntary Disappearances had recorded only 10 cases that year. The situation in Peru continued to be characterized by violence on the part of subversive groups combined with the State's efforts to put down the insurrection. The lack of independence of the judiciary in that authoritarian context encouraged numerous abuses of power. The rights to freedom and inviolability of the individual, justice and respect for legality were those most often violated, since anti-terrorist legislation allowed the police to hold a person, incommunicado in some cases, for up to 30 hours without a warrant. In 1993, almost 3,500 people had been detained under that legislation during police operations in Lima alone, often because they had been unable to produce their identity papers, although the lack of papers was a common occurrence in that town. As the Special Rapporteur on the question of torture had stated, Peruvian legislation thus facilitated torture. In addition, the Andean Commission of Jurists was of the view that incommunicado detention and the fact that applications for the remedies of habeas corpus and amparo had been prohibited since 26 November 1993 also explained why torture had become widespread.

39. Yet those figures failed to give an accurate idea of the extent to which torture was practised, for in a large number of cases the victims feared reprisals by their torturers and received no support whatsoever from judges. Impunity was largely to blame for torture and the sexual abuse to which women were subjected.

40. He was convinced that the valuable recommendations of the special rapporteurs must be implemented and that the international community must devote the necessary attention to the matter if minimum standards of respect of the right to life, freedom and inviolability of the individual, so gravely violated in many countries of the Andean region, were to be improved.

41. Ms. BAUER (Article 19, The International Centre Against Censorship) welcomed the Commission's appointment of a Special Rapporteur on the promotion

and protection of the right to freedom of opinion and expression, but regretted that because of the Centre's inadequate resources, the Special Rapporteur, Mr. Hussain, had not been able to submit as detailed a report as he would have wished to the Commission. With regard to that report (E/CN.4/1994/33), Article 19 had noted in particular Mr. Hussain's intention to bear in mind General Comment 10 of the Human Rights Committee (CCPR/C/21/Rev.1) which stated that the International Covenant on Civil and Political Rights permitted no exception to or restriction of the right to hold opinions without interference. It also welcomed the fact that the Special Rapporteur intended to investigate reports of summary executions, torture, arbitrary detention, disappearances and the harassment of individuals seeking to exercise their right to freedom of opinion and expression, and to adopt the urgent action procedure for cases that are of a life-threatening nature.

42. However, Article 19 wished to emphasize that violations of the right to freedom of opinion and expression were often subtle and did not always result in such flagrant abuses as torture and arbitrary detention. Firstly, those violations could occur when the law was abused by States. In Turkey, for example, the anti-terrorist law defined terrorism in very vague terms, and required no evidence of violence. It could therefore be used to take action against anyone who criticized the Government. In December 1993, five members of the Turkish Human Rights Association had been charged under that law for speeches made during the celebration of Human Rights Day. Similarly, publications containing articles critical of the Turkish security forces had been confiscated under that law.

43. In certain situations, moreover, a chain reaction occurred, when government measures and the reactions of non-governmental bodies provoked a succession of incidents and responses during which the right to freedom of opinion and expression was constantly violated. In Algeria, for example, Islamists had threatened, intimidated and assassinated foreigners and intellectuals; the Government had reacted by restricting the freedom of the press in order to counter the violence, and that has led to journalists being prosecuted for publishing information deemed to endanger State institutions.

44. Lastly, the international community had not reacted resolutely to the inertia and even apparent silent complicity, of certain Governments with regard to political violence in their countries. In Kenya, it appeared that the aim of such violence was to exacerbate ethnic conflicts between groups which had previously coexisted peacefully. The prohibition of reporting on the political violence in the Rift Valley was a flagrant violation of freedom of expression and information. In Malawi, the continuation of violence was likely to undermine the transition to a pluralist system.

45. Article 19 condemned the international community's silence over repeated violations of freedom of association, expression and opinion. It was incorrect, for example, that the violence was linked to the tribal nature of African society and could not be controlled by Governments. If the international community continued to ignore political violence, it would be very difficult for the new Commissioner for Human Rights to implement the early warning system intended to indicate when the time had come for immediate action, before situations deteriorated into serious conflicts, as they all too often did. Article 19 urged the Special Rapporteur on the promotion and

protection of the right to freedom of opinion and expression to interpret his mandate in the broadest possible way in order to ensure that all violations, whether committed by Governments or non-governmental bodies, were brought to light and investigated.

46. In conclusion, she said that the United Nations should publish a comprehensive annual report on the human rights situation based on all information received through special procedures and in the reports of the special rapporteurs. The Commission should consider how such a report should be presented and what it should contain; in particular, it should contain recommendations addressed to States found to be violating human rights and to United Nations specialized agencies whose activities had a human rights component.

46. Mr. TOTSUKA (International Fellowship of Reconciliation) said that he intended to supplement the information provided in the written statement submitted by his organization, document E/CN.4/1994/NGO/19, on the issue of so-called "comfort women" forced into sexual slavery by the Japanese military during the Second World War, in relation to the question of impunity. The excellent report by Mr. Guissé and Mr. Joinet on that question (E/CN.4/Sub.2/1993/6) made the point that the impunity of the perpetrators of gross violations of human rights was prohibited under international law.

47. On 7 February 1994, representatives of 27 victims of sexual slavery from the Republic of Korea and the Korean Council for the Women Drafted for Sexual Slavery by Japan had requested the Tokyo District Prosecutor's Office to initiate an investigation with a view to the punishment of the perpetrators of those offences, which were war crimes and crimes against humanity. The complaints had immediately been rejected by the Prosecutor's Office on the grounds that the acts in question could no longer be prosecuted because of statutory limitation and because they were not punishable under Japanese law. The Japanese Government also stated that the issues raised by the Republic of Korea concerning the "comfort women" had already been resolved by the agreement of 27 February 1965 between that country and Japan. Yet that agreement covered only problems connected with "the properties, rights, and interests" of the victims. The rejection of the complaints contradicted Japan's acknowledgement of the facts at the Sub-Commission's previous session when it had admitted that the Japanese imperial forces had forced women into slavery during the Second World War. Given that admission it might have been thought that Japan was bound by international law to prosecute the perpetrators of those crimes, and that if they were not punishable under Japanese law, it would have to adopt a law to bring its legislation into line with international law. IFOR had submitted to the Japanese Prime Minister, Mr. Morihiro Hosokawa, a series of recommendations, including a proposal for a law under which that crime would be punished in accordance with international law. Yet the fact that Japan had failed to punish a single one of the perpetrators of that crime constituted one of the worst examples of de facto impunity in the history of the world.

48. Several reports by experts of the Sub-Commission were of great assistance in clarifying the legal problems involved. The Sub-Commission had proposed

that the Commission should appoint Ms. Linda Chavez, a Sub-Commission expert, as Special Rapporteur on slavery and slavery-like practices in wartime, and he urged the Commission to encourage the Sub-Commission, the Working Group on Contemporary Forms of Slavery and the special rapporteurs to continue their work, taking into account the information submitted by his organization.

49. Ms. RISHMAWI (International Commission of Jurists) called upon the Commission to appoint a Special Rapporteur on the independence of the judiciary and the legal profession and to give its full support to the Sub-Commission's recommendation to that effect, since human rights could be effectively protected only if judges and lawyers were free from pressure and the legal system functioned without hindrance. For several years, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had been studying measures to ensure the independence of the judiciary. The excellent reports by Mr. Louis Joinet on that question continued to highlight the need for monitoring the situation.

50. In its fifth annual report, entitled "Attacks on Justice", the Centre for the Independence of Judges and Lawyers (CIJL) had recorded the cases of 352 jurists in 54 countries who had been harassed or persecuted; 32 had been killed, 3 had disappeared, 34 had been attacked, 81 had been threatened, 95 had been detained and 107 had been punished by professional sanctions. That violence directed against members of the legal profession was the work not only of Governments, but also of opposition groups, guerrillas and paramilitary groups. The Special Rapporteur could identify and investigate cases of judges and lawyers prevented from carrying out their functions. He could also examine the contexts in which violations of judicial independence occurred and establish the root causes of such situations. Structural defects in legal systems often exposed judges to attacks on their independence. The Special Rapporteur could also help many countries to improve their legal system.

51. But in order to fully guarantee the independence of the judiciary, it was necessary to look beyond the protection of individual members of the legal profession and the system of codes and procedures in which they operated. It was necessary to examine society at large in order to identify the forces likely to encroach upon the independence of the judiciary. In that context, the question of the relationship between the media and the judiciary should be considered. In January, CIJL had brought together journalists and members of the legal profession at a seminar in Madrid. The participants had drawn up a list of principles which would reconcile the concepts of freedom of expression and judicial independence. Copies of the list of principles were available for members of the Commission. The question of justice in situations of emergency should also be given close attention.

52. With regard to the question of disappearances, the International Commission of Jurists was very concerned by the discovery at the beginning of the previous month of a mass grave in Suriyakananda (Sri Lanka), containing the remains of 20 persons. Its discovery appeared to be connected with the "disappearances" of thousands of people in that country between 1988 and 1990. The Working Group on Enforced or Involuntary Disappearances had visited Sri Lanka in 1991 and 1992 and, in particular, had recommended that the Government should call upon forensic experts to attempt to identify the

victims. It was vital that the remains of the victims should be exhumed with great care and in a scientific manner so that they could be identified and evidence gathered.

53. Mr. DAFTARI (International Falcon Movement - Socialist Educational International) condemned the human rights violations committed in Iran and the Iranian Government's hindrance of all attempts to monitor the application of those rights; the Special Representative, Mr. Galindo Pohl, ICRC and Amnesty International, various NGOs, the International Bar Association and other organizations for the protection of human rights which had operated in Iran before 1980 were not allowed to enter the country. Iranian citizens themselves were persecuted, harassed and subjected to censorship.

54. On 25 April 1993, the Council of Guardians had approved the new "law of Islamic punishments", which replaced the Code of 1982. The long list of crimes punishable by death and of various physical punishment (mutilation, amputation, stoning, etc.) had not been reduced. Crimes as loosely defined as "corruption" and "rebellion against God" were still on the list. The rights of women were still flouted: for example, the testimony of a woman did not have the same value as that of a man. In the case of the application of the lex talionis, the price (blood money) paid for a Muslim woman was only half that for a Muslim man, and the price for a non-Muslim one tenth of that for a Muslim. Children continued to be held criminally responsible from an early age. Article 1210 of the Civil Code set "religious maturity" at the ridiculous age of 15 lunar years for a boy and nine lunar years for a girl, so that from the age of nine, girls were liable to "Islamic punishments".

55. The judiciary was an adjunct of the Government and imposed an authoritarian, theocratic order. Secular judges had been dismissed after the 1979 revolution. Since then, students and teachers from religious schools with virtually no experience had been appointed as judges; it was their task to preside at Islamic revolutionary tribunals with jurisdiction over offences punishable by death, such as political dissidence, non-conformism, adultery, apostasy, drugs trafficking and armed robbery. The aim of the State system was to maintain constant control over the citizens of the country. Neither the limits of criminal responsibility nor the nature of offences and punishments were clearly defined. The principle of "nulla peona sine leqe" was virtually meaningless in Iran. Judges enjoyed enormous discretion in their choice of punishments. They could, in the name of God, order the execution of political prisoners and pass collective death sentences on persons and groups in absentia. One such example was the infamous death sentence for apostasy passed on Salman Rushdie, his editors and his translators.

56. In September 1984, the General Council of the Court of Cassation, which was empowered to establish legally binding precedents in respect of guarantees of due process of law, reaffirmed the legal rights of defence. But since February 1979, when the new regime took power in Iran, members of the Bar had been discouraged from representing or assisting persons appearing before revolutionary courts. The most recent blow to the right to defence had come in 1981, when the Government had placed the Bar Association under its authority. The Iranian Bar had a long tradition of independence and of

defending human rights. Under the present regime, none of the persons sentenced to death or to long periods of imprisonment by the Islamic Revolutionary Courts had been assisted by a lawyer.

57. On the subject of terrorist acts, extrajudicial executions and disappearances, he submitted to the Commission a list (drawn up in August 1993) of 101 terrorist acts committed against Iranian dissidents in exile. Six of them had occurred during the Commission's previous session (for example, the murder on 16 March 1993 of Mr. Hossein Naghdi, a colleague of Dr. Kazem Rajavi killed in April 1990). Since 1979, more than 70 people had been murdered and over 300 injured, maimed or poisoned. One of the most recent disappearances was that of Haik Hovsepian Mehr, a leader of the Assembly of God Church, which was not recognized by the regime and whose members were persecuted; he had disappeared on 19 January 1994.

58. The Commission on Human Rights could not remain passive in the face of the situation in Iran. It must do everything possible to ensure that the Special Representative, Mr. Galindo Pohl, and organizations for the protection of human rights were able to go to that country; it should also request the Iranian Government to extradite the perpetrators of acts of terrorism against Iranian dissidents and to set aside all reservations to the Convention on the Rights of the Child. If the Iranian Government did not comply with those demands, there would be sufficient grounds to submit the question of the human rights situation in Iran to the competent international body, namely, the Security Council, so that it could impose economic and political sanctions.

The meeting rose at 5.55 p.m.